

Remarks

In accordance with the election of Group I, in the foregoing amendment, claims 1, 2, 10, 11, 12, 13, 14, 15, 17 and 21 are amended. Claims 5, 9, 19, 20, 22 and 25 are cancelled. The claims now pending in the application are 1-4, 6-8, 10-18, 21, 23 and 24.

The independent claims of Group I have been amended to identify the mutant identified in dependent claim 9, now canceled. The region in which the mutation is located (the eight amino acid region E51-I58, which has the sequence EVPGSQHI) is common to both CtxB and EtxB.

The independent claims of Group I have been amended to identify the agent as a peptide or protein. There are no claims now pending to the composition of Group II or to non-elected agents.

Applicants traverse the Examiner's election to the extent the Examiner would still require election of either EtxB or CtxB despite the foregoing Amendment. The method presented in the amended Group I claims employs a mutant, the mutation being in amino acid residues E51-I58 of the b4-a2 loop which is common to both CtxB and EtxB. Claim one delivers an agent such as a peptide/protein, in combination with the same mutant amino acid sequence to a cell.

The same mutation is specified in all of the amended claims of Group I. Any search of the prior art necessarily includes a search for this mutation as an essential component of the claimed method, whether incorporated in EtxB or CtxB. The restriction requirement, if not withdrawn, will compel duplicate searching of the same art for the same mutation. The purpose of a restriction requirement is to identify separate inventions and to permit separate searches when there are separate inventions. In the present case, there is one invention, relating to a mutation in a specific region (EVPGSQHI) identified in two specific proteins. To restrict the invention to either EtxB or CtxB at this

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time would be to force unnecessary additional patent filings at a time when the USPTO is trying to reduce multiple filings and attendant paperwork. (See e.g. "Changes To Practice for Continuing Applications, Requests for Continued Examination Practice, and Applications Containing Patentably Indistinct Claims." 71 Fed. Reg. 48).

Therefore, applicants respectfully request the Examiner to reconsider and withdraw the restriction requirement in view of the foregoing amendment.

Respectfully submitted,

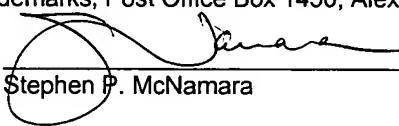
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Mailing Certificate: I hereby certify that this correspondence is today being deposited with the U.S. Postal Service as *First Class Mail* in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents and Trademarks; Post Office Box 1450; Alexandria, VA 22313-1450.

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